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78-1179

In The
Supreme Court Of The United States

October Term, 1978

No.

William Grant, Jr., Joseph Guerriero, Ralph Irace
Petitioners,

v.

United States of America,
Respondent.

JOINT PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

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In The
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No.

WILLIAM GRANT, JR., JOSEPH GUERRIERO, RALPH IRACE

Petitioners,

v.

UNITED STATES OF AMERICA,

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JOINT PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES
OF THE SUPREME COURT OF THE UNITED STATES:

All of the above-named petitioners respectfully pray that a writ of certiorari issue to review the judgement and opinion of the United States Court of Appeals for the Second Circuit entered in this proceeding on July 21, 1978.

Opinions Below

The opinions of the Court of Appeals, not yet reported, appear in the PETITIONERS' JOINT APPENDIX hereto. The opinion rendered by the District Court for the District of Connecticut on the Appellants' joint Motions to Suppress is reported at 430 F Supp. 931.

Jurisdiction

The judgements of the Court of Appeals for the Second Circuit were entered on June 13, 1978 and July 21, 1978. Petitions for rehearing and suggestions for rehearing en banc were denied on August 7, 1978 and November 13, 1978, and the Appellants herein were granted a motion for extension of time to file this Petition for a Writ of Certiorari until January 29, 1979. The Petition was filed on or before January 29, 1979. This Court's jurisdiction is invoked under 28 U.S.C. § 1254 (1)

Questions Presented

1. Whether compliance with Section 2518(1)(E) of Title 18, U.S.C., is a "stringent pre-condition" to the issuance of an interception order under Title III of the Omnibus Crime Control and Safe Streets Act of 1968?

2. Whether Title III of the Omnibus Crime Control and Safe Streets Act of 1968 authorizes or contemplates a joint application for the simultaneous interception of both wire and oral communications?

3. Whether appellants have standing, pursuant to Sections 2510(11) and 2518(10)(a) of Title 18, U.S.C., to challenge the interceptions since the several surreptitious entries permitted unlawful interceptions, were not sufficiently authorized on the face of the interception authorization, and were not made in conformity with the District Court's express order of authorization or approval?

4. Whether Title 111 and the Fourth Amendment to the United States Constitution permit surreptitious entries to install oral and wire interceptions devices without specific authorization by Court order as was held in the Second Circuit precedent to the instant case in *United States v. Scafidi*?

5. Whether the summary decision in the instant appeal has erroneously enlarged the holding in *United States v. Scafidi* to permit surreptitious entries to install oral and/or wire interception devices into premises other than "target premises" which other premises are not mentioned or referred to in any way in the Government's Application, or in the Court's Order and Authorization.

6. Whether Title 111 implicitly or explicitly authorizes a District Court to order a surreptitious entry to install oral and/or wire interception devices?

7. Whether procedural rules on admitting taped conversations into evidence were violated.

8. Whether the Defendant's right to a fair trial was violated in that government-prepared copies of the taped conversations were submitted to the jury for use in their deliberations, *Palko v. Connecticut, United States v. Bryant.*

9. Whether the affirmation of conviction in the instant appeal erroneously interprets the extent of involvement required under 18 U.S.C. § 1955.

Statement of the Case

(1.) Proceedings to Date:

On April 7, 1976, a Grand Jury sitting at Hartford, Connecticut, returned several true bills of indictment charging various defendants with violations of various Federal criminal statutes. Said indictments stemmed in large part from

the Grand Jury's investigation of "organized crime" in the Hartford area, which investigation was principally based on conversations overheard by means of electronic surveillance.

In Criminal No. H-76-37, the Grand Jury returned an eight-count indictment charging twenty defendants with the following:

Count One: that the co-defendants Michael T. O'Brien and Anthony D. Volpe did engage in an enterprise affecting interstate commerce, to wit an illegal gambling and debt collection business utilizing facilities at 103 New Britain Avenue, Hartford, Connecticut, and in the conduct of said enterprise engaged in a pattern of racketeering activities and the collection of unlawful (usurious) debts; in violation of 18 U.S.C. §§ 1962(c), 1963 and 2.

Count Two: That the co-defendants O'Brien and Volpe and seventeen named but unindicted co-conspirators conspired to engage in the aforesaid enterprise through a pattern of racketeering activity and the collection of an unlawful debt, in violation of 18 U.S.C. §§ 1962(d) and 1963.

Count Three: that the co-defendants O'Brien, Volpe and John T. Dellaferra, Charles Boornazian, Eugene Poulin, John Castagna, Lawrence DiBenedetto, William Jacomini, Richard Bovino, Michael Chiarizio, Robert E. Morris, Frank Cecchini, George Speziale, Andrew Mascola, Ralph Irace, John Lepito, Joseph Guerriero and William Grant, Jr., conducted, managed, supervised and directed all or part of an illegal gambling business together, which bookmaking and numbers business was in substantially continuous operation for a period of in excess of thirty (30) days, and has a gross revenue of $2,000 or more on one or more days and involved five or more persons, and which was in violation of the laws of the State of Connecticut, in violation of 18 U.S.C. §§ 1955 and 2.

Count Four: that the co-defendants named in Count Three conspired to conduct the aforesaid illegal gambling business in violation of 18 U.S.C. § 371.

Count Five: that the co-defendants Volpe and DiBenedetto, and one Ronald Del Mastro conspired to use

extortionate means to collect from one debtor George DeMirs an extension of credit in the approximate amount of $1,200; and that Del Mastro, Volpe and DiBenedetto conspired to make explicit and implicit threats of violence to cause harm to said DeMirs, in violation of 18 U.S.C. § 894.

Count Six: that defendant O'Brien used extortionate means to attempt to collect from debtor Robert Hames an extension of credit in the approximate amount of $3,500; and that O'Brien expressly and implicitly, by use of a telephone call, threatened the use of violence to cause harm to Hames, in violation of 18 U.S.C. § 894.

Count Seven: that O'Brien, and co-defendants John Sullivan and Francis J. Campanelle conspired to use extortionate means to collect an extension of credit from Joseph C. Barresi, a debtor; and they conspired to use violence and to make explicit and implicit threats of the use of violence and other criminal means to cause harm to the person and property of said Joseph C. Barresi and others, in violation of 18 U.S.C. § 894.

Count Eight: that defendant Volpe corruptly endeavored to influence one Betty Beaulieu not to testify before an investigating Federal Grand Jury sitting at Hartford, Connecticut, and thereby corruptly endeavored to influence, obstruct and impede the due administration of justice in the United States District Court for the District of Connecticut, in violation of 18 U.S.C. § 1503.

Numerous pre-trial motions were filed on behalf of these defendants and argued to the Court. The Defendants in this case and appeal were also Defendants in *United States of America v. Anthony D. Volpe*, et al, Docket Nos. 77-1313, et al, but were severed March 1, 1978, at a pre-argument conference, as to the issues raised at their trial only. As to the issues raised by the motion to suppress the fruits of the electronic surveillance and subsequent proceedings thereon, which were raised by all of the Defendants prior to their separate trials, it was agreed by all counsel for the Defendants and for the Government that there would be no severance. These issues were raised in the appeal to the United States Court of Appeals decided June 13, 1978, a copy of which

decision is attached hereto. The Petition for a Writ of Certiorari submitted by F. Mac Buckley, lead counsel, in the case of *Anthony D. Volpe, et al v. United States of America* now pending before this Court, does not, however, include the names of the appelants to this Petition. In that the first six (6) of the questions presented involve issues raised in the suppression motion, language from the Buckley brief is copiously employed in this Petition.

A four day hearing was held, prior to the severance, on the motion to suppress. Briefs by counsel were submitted. The Court (Clarie, J.) denied said Motion in a lengthy memorandum set out in *United States v. Volpe,* 430 F Supp. 931 (D. Conn. 1977). Judge Clarie also denied Defendant's motion to disqualify himself from hearing said motion to suppress.

The Court severed the Defendants Volpe, O'Brien and DiBenedetto from the other Defendants in Criminal No. H-76-37, and set the order of trial that these three Defendants would proceed to trial first.

On April 12, 1977, the trial of Appellants Volpe, O'Brien and DiBenedetto commenced with the selection of a twelve-person jury with four alternates. After a lengthy trial, the jury returned a verdict of guilty on May 27, 1977 against Appellant Volpe on Counts 1, 2, 3, 4 and 5; against Appellant O'Brien on Counts 1, 2, 3, 4, 6 and 7; and against Appellant DiBenedetto on Count 5. The jury acquitted Appellant DiBenedetto on both Counts 3 and 4. On July 5, 1977, Judge Clarie imposed the following sentences:

ANTHONY VOLPE: Count One: not less than three or more than ten years imprisonment and a $20,000 committed fine; Counts Two, Three and Four: three years imprisonment on each concurrent with the sentence imposed on Count One; Count Five; not less than three or more than ten years imprisonment and a $20,000 committed fine, concurrent with sentences imposed on Counts One through Four.

MICHAEL O'BRIEN: the same sentence on Counts One through Four as received by Appellant Volpe; Count Six: not less than three nor more than ten years imprison-

ment and a $20,000 committed fine concurrent with sentence imposed on the other counts; Count Seven: not less than three nor more than ten years imprisonment and a $20,000 committed fine concurrent with sentences imposed on all other counts.

LAWRENCE DI BENEDETTO: On Count Five: eighteen months imprisonment and a $5,000 committed fine.

On June 13, 1978, this Court, in a Summary Order, affirmed the convictions of Volpe, O'Brien and DiBenedetto.

On June 27, 1977, after the trial of Volpe, O'Brien and DiBenedetto, the Court scheduled the trial of the other defendants in this indictment. On that date defendants Jacomini, Bovino, Morris, Cecchini, Speziale, Lepito, Della Ferra, Poulin and Boornazian, each entered a plea of "Guilty" to Count Three of the Indictment.

On July 28, 1977, Judge Clarie imposed the following sentences on those aforesaid individuals who plead "Guilty" to Count Three:[1]

DELLA FERRA: eighteen months imprisonment, a $3,000 committed fine, execution suspended after serving six months, and two years probation;

BOORNAZIAN, eighteen months imprisonment, a $2,500 committed fine, execution suspended after serving four months, and two years probation;

BOVINO: eighteen months imprisonment, a $2,500 committed fine, execution suspended after serving ninety days, and two years probation;

CECCHINI: eighteen months imprisonment, a $2,500 committed fine, execution suspended after serving ninety days, and two years probation;

SPEZIALE. eighteen months imprisonment, a $1,000 committed fine, execution suspended after serving ninety days, and two years probation;

LEPITO: eighteen months imprisonment, a $2,500 committed fine, execution suspended after thirty days, and two years probation.

1. Count Four was dismissed on motion of the Government following sentencing.

On July 29, 1977, Judge Clarie imposed the following sentences on those other aforesaid defendants who entered "Guilty" pleas on Count Three:

POULIN: eighteen months imprisonment, a $500 committed fine, execution suspended, and two years probation;

JACOMINI: eighteen months imprisonment, a $2,500 committed fine, execution suspended after serving four months, and two years probation;

MORRIS: eighteen months imprisonment, a $1,000 committed fine, execution suspended, and two years probation.

Della Ferra, Boornazian, Bovino, Cecchini, Speziale, Lepito, Poulin, Jacomini and Morris, pursuant to an agreement with the Government, which was approved by the District Court, reserved their right to appeal Judge Clarie's denial of the motion to suppress the fruits of the electronic surveillance. They joined in the appeal taken by Volpe, O'Brien and DiBenedetto, and their convictions were also affirmed by this Court on June 13, 1978. Each of these defendants is named in the Petition for a Writ of Certimari submitted by F. Mac Buckley, lead counsel, and now pending before this court, the same petition which omits the names of the defendant parties to this Petition.

On October 13, 1977, the trial of Appellants Ralph Irace, Joseph Guerriero, and William Grant, as well as Andrew Mascola and Michael Chiarizio, commenced with the selection of a jury of twelve and two alternates. The Government began its case on November 2, 1977, and called a total of six witnesses. The Appellant Grant took the stand in his own behalf and called two witnesses. Appellant Irace did not take the stand and called no witnesses in his behalf. Appellant Guerriero did not take the stand, but called one witness on his behalf.[2] Andrew Mascola took the stand in his own behalf and called one witness. Michael Chiarizio took the stand in his own behalf and called one witness. The trial lasted a total of ten days.

On November 22, 1977, the jury returned verdicts of

guilty on all counts charged against the defendants. The District Court denied a motion for a new trial on November 30, 1977. Appellants Irace and Guerriero, and Mascola and Chiarizio all received sentences of two years imprisonment, suspended after 90 days, $5,000 fines, and two years probation on each count, with the sentences to run concurrently. Appellant Grant received a two year sentence, suspended after 90 days, a $5,000 fine, and two years probation for his conviction on Count Three.[3] Michael Chiarizio did not appeal his conviction. Andrew Mascola withdrew his appeal on March 22, 1978. Grant, Guerriero and Irace appealed to the United States Court of Appeals for the Second Circuit.[4]

(11.) Background Facts From Hearings On Appellants' Joint Motions To Suppress:

On December 16, 1974, the Hon. T. Emmet Clarie signed an order authorizing the interception of wire and oral communications of Michael O'Brien and others at premises known as 103 New Britain Avenue, Hartford. The order was the result of an affidavit signed by Special Agent Dewey L. Santacroce of the F.B.I. and an application filed by Paul E. Coffey and Peter Casey, Strike Force Attorneys. Authorization to file the application was provided by William B. Saxbe, Attorney General of the United States by way of a memorandum dated December 12, 1974. Neither the authorization, application, affidavit nor order made

2. Judge Clarie sustained the Government's objection to the testimony of the witness, an employee of the Connecticut Commission of Special Revenue. The witness was allowed to give testimony outside the presence of the jury, but defense counsel was only allowed to establish his employment before the jury. The proposed testimony concerned wagering activity sanctioned by the State of Connecticut (Tr., Vol. IX, pp. 1477-1491).

3. Grant, Mascola and Chiarizio were sentenced by Judge Clarie on January 9, 1978. Guerriero was sentenced on January 10, 1978, and Irace was sentenced on January 16, 1978.

4. Appellants Grant, Guerriero and Irace have been at liberty during the pendency of this appeal.

reference to an entry into premises known as 11 Julius Street or 99 New Britain Avenue.

The Premises

The premises known as 103 New Britain Avenue is the location of the O'Brien-Sullivan Home Improvement Co., which is owned and operated by Michael O'Brien, the central target of the December 16th interception order. This company is one of a number of commercial and residential tenants housed in an L-shaped building known as 11 Julius Street. (Vol. III, p. 33).[1] A portion of the basement area consists of a number of partitioned rooms. As one descends the stairs to the basement, a coin-operated washer and dryer are located immediately to the left (Vol. III, p. 37). Also to the left is small office (Vol. III, p. 37-8). Beyond the furnace is a large, timber wire mesh enclosure which is situated underneath 99 New Britain Avenue (Vol. III, p. 38). Underneath 103 New Britain Avenue is another wire mesh door. (Vol. IV, pp. 243-4). Located in the basement are two telephone terminal boxes. (Vol. IV, pp. 245-6). One terminal box is located on a support column before one reached the basement and is marked "telephone box and pole of Government's Exhibit 3 of the hearing on the Motion to Suppress. (Vol. III, p. 38). Another box is located in a timber, wire mesh enclosure beneath 99 New Britain Avenue. (Vol. IV, p. 246).

The Initial Visits to the Premises

During the early morning hours of December 17, 1974, Special Agents H. Edward Tickle, a security technician from Washington, Richard D. Ludwig, Dewey Santacroce, James Miller and Phillip Krum arrived at 103 New Britain Avenue.

1. References to Vol. and Pg. herein are to Transcripts of the Hearing on The Motion To Suppress and the Trial, numbered sequentially and in chronological order. Four copies of each such transcript are on file with the Record on Appeal at the United States Court of Appeals for the Second Circuit.

(Vol. IV, pp. 292, 294, 299). Agent Tickle then made a key for 103 New Britain Avenue and entered the premises along with Agent Ludwig. (Vol. IV, pp. 297-299). Agent Tickle then attempted to impression the lock to the rear door entrance to the common basement area but was unable to do so because the lock was malfunctioning. (Vol. IV, p. 301).

Agent Tickle then proceeded to 11 Julius Street, proceeded through the two outer swinging doors and entered into the front hallway area. (Vol. IV, p. 302). He did not attempt to make a key impression to the door leading to the common basement because a skeleton key was needed. At that time the agents ceased their activities for the night. (Vol. IV, p. 303).

During the early morning hours of December 18, 1974, Agents Tickle and Ludwig returned to the premises. (Vol. IV, pp. 246-7, and 306). They were accompanied on this occasion by Special Agent Robert Puckett, a sound technician, and Special Agent McWhorter. (Vol. IV, pp. 237-241). Agent Puckett entered 102 New Britain Avenue with the key made by Agent Tickle on December 17, 1974. Puckett then placed a microphone or bug under the floor of 103 New Britain Avenue where a water pipe ran through a hole in the floor to the basement. (Vol. IV, p. 240). The wires attached to the bug were dropped through the hole and dangled below in the basement. (Vol. IV, pp. 240-1). While Agent Puckett was performing his duties, Agent Tickle and another agent entered the basement area of 11 Julius Street through the use of a skeleton key to the front basement door, which key had been flown in from Washington. (Vol. IV, p. 307). Agent Tickle then entered the wire mesh cage below 103 New Britain Avenue by picking the lock to the cage door. (Vol. IV, pp. 308-9). Agent Tickle then took hold of the wires from the bug and connected them to the telephone box on the post. (Vol. IV, p. 309). Upon leaving the wire mesh cage he locked the door. (Vol. IV, pp. 309, 332-3). Agent Puckett had in the meantime come down to the basement and assisted in the hookup of bug. (Vol. IV, p. 245). Thereafter Puckett attempted to connect the wires he knew to be at a multiple of telephone number 247-6309 to a circuit wire he had leased

from the telephone company. He also tried to connect the bug to another pair of leased wires. (Vol. IV, p. 245). No attempt was made to connect the wiretap or bug to the telephone box inside the cages area below 99 New Britain Avenue. (Vol. IV, p. 246). The attempt to make the foregoing connections were unsuccessful. (Vol. IV, p. 247). While Agent Puckett was engaged in these activities, Agent Tickle went to the rear cellar entrance and made a key to the lock on that door. (Vol. IV, p. 310). Agent Tickle did not file a report of his key-making mission. (Vol. IV, p. 313).

During the evening hours of December 18, 1974, Agent Puckett returned to the premises. (Vol. IV, p. 248). Agents Ludwig and Santacroce accompanied him, but Agent Tickle did not. (Vol. IV, p. 248). Again entry was made into the basement via a key to the front door of 11 Julius Street. (Vol. IV, p. 249). Puckett and Ludwig again attempted to get the interception equipment to function but failed. (Vol. IV, p. 249). In checking the wires, Puckett entered the wire mesh cage below 103 New Britain Avenue. The door to the cage was unlocked and Puckett pulled it open. (Vol. IV, p. 253). Puckett thereafter reported his technical problems to Agent Santacroce. (Vol. IV, p. 254).

The December 19th In Chambers Hearing

On December 19, 1974 from 10:10 a.m. to 10:30 A.M., an in chambers hearing was held concerning the wiretap and bug applications. Present were Judge Clarie, Attorneys Casey and Coffey and Agent Santacroce. Agent Santacroce reported to the Court that the appearances for telephone number 247-6309 were located in a corner of the basement housing 99 New Britain Avenue. (Vol. I, 12-19-74, p. 4). Agent Santacroce further testified that the box under 99 New Britain Avenue was "the sole place that the appearances are available, that would allow us access to utilize those appearances." (Vol. I, 12-19-74, p. 4). Agent Santacroce advised the Court that there was an alternative procedure that could be utilized by running two separate lease lines. (Vol. I, 12-19-75, p. 5). However, Mr. O'Connor of the

Southern New England Telephone Co. preferred hooking up to the 99 New Britain Avenue box because it "would be a lot easier than for them to have to do what they would have to do to implement this, time-wise, particularly . . . " (Vol. I, 12-19-74, pp. 5-6).

The Court then asked: "Now, would the additional authority require — what you already have, which is 103 New Britain Avenue, for this wiretap information — it would also require access to 101 New Britain Avenue and 99 New Britain Avenue, is that correct?" (Vol. I, 12-19-74, p. 6). Agent Santacroce responded: "It would only require us to go into 99 New Britain Avenue." (Vol. I, 12-19-74, p. 6).

Agent Santacroce advised the Court that entry into 99 New Britain Avenue would not interfere with business activity because: "We would not go in there during the period of business activity." (Vol. I, 12-19-74, p. 8).

Attorney Casey then advised the Court that he had a proposed order he would like to submit. Agent Santacroce further advised the Court that "it is also necessary for us to go into 11 Julia (sic) Street, which is this whole entire common basement, in order to hook on the box there, where our microe wires would come into. So it would be going into both 99 New Britain Avenue and 11 Julia (sic) Street, to get to that box." (Vol. I, 12-19-74, pp. 8 and 9).

At this point the Court expressed concern over the procedure: "He hasn't been served with papers; he doesn't know they are there, and they are trespassers and suppose he injured, grossly injured one of these strangers on his premisesfi . . . " (Vol. I, 12-19-74, p. 9).

Mr. Coffey then advised the Court that "there is apparently no way that the Court's order can be implemented, unless the Court authorizes these agents to go on the premises . . . " (Vol. I, 12-19-74, p. 10).

Again the Court expressed concern that the proprietor of John's Delicatessen might mistake the agents for burglars and shoot them. The Court then asked: "How expensive would it be to put in these lease wires to the pole?" Agent Santacroce responded that he didn't know but it would involve a time delay. The Court responded: "I think it would

be wisdom to do that . . . I think wisdom would dictate that whatever it cost for the leased wire, for the telephone company to put it on a pole there, or down the street a block, that the money is well invested." (Vol. I, 12-19-74, pp. 10-12).

Agent Santacroce then inquired what should be done if the phone company determined that the wiretap could be connected to another location but the microphone bug could not. The Court advised that when the information is obtained from the phone company, the hearing be reopened and the information be put on the record. (Vol. I, 12-19-74, p. 13). This was never done. The proposed order the Court was asked to sign cannot be found.

Entry Into 99 New Britain Avenue

At 2:00 p.m. on December 19, 1974, approximately 3 1/2 hours after the in chambers hearing, Agent Puckett and a telephone repairman entered 99 New Britain Avenue. (Vol. IV, p. 255). They met the owner of the Delicatessen. (Vol. IV, p. 256). The repairman told the owner of the Delicatessen he wanted to go to the telephone equipment in the basement. (Vol. IV, p. 257). Agent Puckett did not identify himself. (Vol. IV, p. 256). The repairman and Agent Puckett then went down the stairs at the rear of the Delicatessen into the wire meshed area. (Vol. IV, p. 259). John, the owner, unlocked the door leading into the caged area and they went in. (Vol. IV, p. 259). Thereafter the telephone and microphone wires were connected to the box inside the wire meshed cage below 99 New Britain Avenue. (Vol. IV, p. 260).

Subsequent Visits

During the evening of December 19th, Agent Puckett returned to the basement area with Agent Ludwig. (Vol. IV, p. 261). The purpose of this visit was to make final connections for the wire and oral interception devices. (Vol. IV, p. 261). Entry was made into the basement via 11 Julius Street. (Vol. IV, p. 262). The two outer swinging doors may have

been locked, and if they were entry was made with a key. (Vol. IV, pp. 262-263). In any event, the basement door was locked and entry was made by use of a key. (Vol. IV, p. 262).

During the evening of December 20, 1974, Agents Puckett and Ludwig returned to the premises (Vol. IV, pp. 264-265) for the purpose of determining why the microphone or bug was not working. (Vol. IV, p. 265). Again a key was used to gain entrance into the door leading to the basement at 11 Julius Street. (Vol. IV, p. 265). Again Agent Puckett entered the screened area below 103 New Britain Avenue; the door was not locked so he opened it to get in. (Vol. IV, pp. 265-266).

On December 30, 1974, Agents Puckett and Ludwig again entered 11 Julius Street by use of a key to the basement door (Vol. IV, p. 266) and disconnected the tap and bug. (Vol. IV, p. 267). Interceptions at the premises ceased as of 2:57 p.m. on December 30, 1974. (Vol. I, 1-2-75, p. 3).

The January Tap

On January 10, 1975, the Government received authorization from Wallace H. Johnson, Assistant Attorney General for Land and Natural Resources Division for permission to apply for an extension of the wire and oral interception order of December 16, 1974 at 103 New Britain Avenue. On the same date, an in chambers hearing was held. Present were Judge Clarie, Peter Casey, Paul Coffey and Dewey L. Santacroce. Pursuant to the authorization, request was made for an extension of the December 16, 1974 Court order. At the conclusion of the hearing on the extension application, the Court expressed concern that the proposed order did not include a provision authorizing entry into 11 Julius Street. (Vol. I, 1-10-75, pp. 26-32). Mr. Coffey and Mr. Casey attempted to allay the Court's concern (Vol. I, 1-10-75), but the Court insisted that " . . . the application should include the premises at 11 Julia (sic) Street." (Vol. I, 1-10-75, p. 35). The Court then reserved judgment on the application. (Vol. I, 1-10-75, p. 35).

Thereafter, a letter was forwarded to Mr. Casey by

Wallace H. Johnson. The letter is file stamped January 15, 1975 and provides as follows:

> Dear Mr. Casey:
>
> On January 10, 1975, pursuant to 18 U.S.C. 2516, I authorized an application for an order authorizing the interception of oral and wire communications from a premises and a telephone located at 103 New Britain Avenue, Hartford, Connecticut. I have since been informed that question has arisen as to the authority of investigative and law enforcement agents to enter upon the premises for the purpose of installing an electronic device for the interception of oral communications and making necessary wire connections for the interception of wire communications authorized pursuant to the subsequent court order issued under 18 U.S.C. 2518. In my view, and that of the Department of Justice, an order authorizing the interception of oral or wire communications carries by implication the authority to make entry for the purpose of installing, maintaining, and removing the necessary electronic devices. In this connection, I note that Congress recognized the need for clearly investing the courts with even more extensive authority to facilitate the implementation of orders authorizing the interception of wire and oral communications. To this end, Congress provided, in part, in 18 U.S.C. 2518(4)(e), as follows:
>
> > An order authorizing the interception of a wire or oral communication shall, upon request of the applicant, direct that a communication common carrier, landlord, custodian or other person shall furnish the applicant forthwith with all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier, landlord, custodian, or person is according the person whose communications are to be intercepted.
>
> I understand that the foregoing views are not entirely dispositive of your question, because the only access to the basement location in which necessary wire connections and the installation of the electronic interception devices have to be ac-

complished must be made through an entrance which, although located in the same building, bears an address different from that of the premises in which the communications which are to be intercepted are uttered. More specifically, it will be necessary to enter a hallway bearing the address of 11 Julia Street, Hartford, Connecticut, in order to install an electronic device in and to make connections to wires leading to the premises bearing the address of 103 New Britain Avenue, Hartford, Connecticut, both of which are part of the same building. At the time I authorized you to make application to a court of competent jurisdiction for an order authorizing the interception of oral or wire communications from the premises located at 103 New Britain Avenue, Hartford, Connecticut, and the telephone located therein, I intended to encompass within my authorization all action reasonably necessary to implement the interception, including any necessary entry for the installation of interception of devices or the making of connections to wires leading to the premises from which the communications were to be intercepted. If my original authorization is not construed to encompass your situation, you may consider this letter as constituting my express authorization to apply to the court for such authority.

On January 16, 1975, the Court signed the extension order, which unlike the December, 1974 order, contained a provision authorizing agents to enter 11 Julius Street. (Vol. II, 1-16-75, pp. 4-5).

On January 16, 1975, at 8:45 p.m. Agents Puckett and Ludwig entered 11 Julius Street with the use of the key to the front basement door. (Vol. IV, pp. 269-70). The microphone and telephone tap were reconnected. (Vol. IV, p. 270).

Entrance was made in the same manner on January 29, 1975, and the microphone was removed and the tap disconnected. The agents again entered the wire mesh area below 103 New Britain Avenue. (Vol. IV, p. 271).

The Connecting to Pole 2602

In his order of December 16, 1974, Judge Ciarie ordered the telephone company (hereinafter referred to as "SNETCO") to furnish the Government "all information, facilities and technical assistance necessary to accomplish the interception" of telephone facility 247-6309. The order did not order SNETCO to assist in the installation of the bug. Between December 16 and 18, 1974, John O'Connor, security representative of SNETCO advised Special Agent Puckett that the wire interception connection could be made at a telephone box located in the basement of 101 New Britain Avenue or at telephone box 2602 located in the rear of 96 New Britain Avenue. (Mot. to Supp., Defendant's Exhibit 6; Vol. V, pp. 538-546). The telephone box in the rear of 96 New Britain Avenue had no spares or vacancies available on December 16, 1974 so that it could not be used immediately to connect the wiretap. (Vol. V, pp. 558-559). However, it would have been a relatively simple procedure to create spares or vacancies. (Vol. V, p. 587). This procedure would not have created an interruption of service or caused any subscribers to change their telephone numbers. (Vol. V, p. 587). This in fact was a common procedure and could have been easily accomplished by SNETCO personnel. (Vol. V, pp. 588 & 613).

The wiretap was not connected to box 2602 because on December 18, 1974, Special Agent Puckett told Mr. O'Connor that it was not feasible to use that pole. (Vol. V, pp. 611, 613-5). Agent Puckett was of the view that the pole could not be used because in addition to the wiretap he had to also connect a bug. And in order to connect the bug to the pole, a wire would have to be run from the basement of 103 New Britain Avenue across the street to pole 2602. (Vol. VI, pp. 822-825).

Prior State Wire Interception

At least three law enforcement officials were responsible for gathering the information which went into the

affidavit in support of the wiretap and oral communication application of December 16, 1974 and January 16, 1975. Agent Dewey Santacroce was the agent in charge of the investigation (Vol. VI, pp. 805-7) as did Caption Bernard Sullivan of the Hartford Police Department. (Vol. IV, p. 429). At page four of his affidavit, Agent Santacroce acknowledges that "this investigation has been a cooperative effort between Special Agents of the Federal Bureau of Investigation and police officers assigned to the Intelligence Division and the Special Service Squad of the Hartford, Connecticut Police Department."

During September, 1972, a panel of the Superior Court for Hartford County issued a wiretap order for the same premises ordered wiretapped and bugged in this case, 103 New Britain Avenue. (Mot. to Supp., Defts' Ex. 8). As in the instant case, the central target of the state wiretap order was Michael T. O'Brien, a reputed bookmaker who used 103 New Britain Avenue as a front for his allegedly illegal enterprise. The State tap led to the arrest of many of the same persons who found themselves the defendants in these cases. (Mot. to Supp. Govern. Exhibit 5). Captain Sullivan worked with Agent Santacroce in the case at bar, assisted in the 1972 State arrests (Vol. IV, p. 428), and supplied information to the State Police which lead to the 1972 State wiretap order. (Vol. IV, pp. 425-7).

Although Captain Sullivan testified that he never told the F.B.I. Agents about the State tap (Vol. V, p. 682), Agent Santacroce's affidavit reveals that Sullivan did tell him of a search he conducted of 103 New Britain Avenue on October 3, 1972. (p. 33). This search was conducted at the time of the wiretap arrest. (Mot. to Supp., Govern. Exhibit 5). Shortly after the arrest, The Hartford Courant published a story concerning the arrests. The article prominently mentioned the fact that wiretaps were utilized in the investigation. Upon reading the article, F.B.I. Agent Ludwig clipped it and forwarded same to the Bureau's filing clerk in New Haven. (Vol. VI, p. 799).

On September 10, 1973, Agents Santacroce and Ludwig interviewed the target of the State wiretap, Michael O'Brien,

in connection with an investigation into the placement of a microphone on the residential telephone of O'Brien's girlfriend, Katherine Malley. (Vol. VI, pp. 770-2). In the course of the interview O'Brien told the agents that in 1972 he had been the subject of a State Police wiretap. (Vol. VI, p. 771). The agents reduced O'Brien's oral comments to written form (Mot. to Supp., Defendants' Exhibit 9), and filed it in a Bureau file on O'Brien. (Vol. VI, p. 775). Prior to the wiretap application in this case, Agent Santacroce reviewed all of his O'Brien file and simply failed to read the report of his interview with O'Brien. (Vol. VI, p. 776).

Agent Ludwig testified that based on the newspaper article in The Hartford Courant and the O'Brien interview he knew of the 1972 State tap and would have included it in the affidavit had he drafted it (Vol. VI, p. 811).

Thus the evidence is uncontroverted that the three law enforcement officers who helped to draft the affidavit knew at some time prior to December 16, 1974 that Michael T. O'Brien was the subject of a State wiretap order and that 103 New Britain Avenue had been the premises tapped.

Reasons For Granting The Writ

The issues raised herein present a clear question concerning the meaning and interpretation of federal statutes, that is provisions of Title 111 of the Omnibus Crime Control and Safe Street Act of 1968 and Title 18, § 1955 U.S.C., as well as an individual's right to due process of law in a criminal proceeding. Issues I through IX involve a substantial question involving the ultimate manner in which provisions to allow the invasion of one's privacy concerning oral and wire communications by Federal law enforcement authorities are implemented.

Additionally, the issues presented in IV, V and IX herein have been resolved differently by different Circuits of the United States Courts of Appeals concerning: the need for specific authorization by Court order to permit surreptitious entries to install oral and wire interception devices, and the degree of involvement necessary by an individual

with a gambling organization to sustain a conviction of violating 18 U.S.C. § 1955.

As to the issues involving entries to install oral and wire interception devices the five United States Courts of Appeals who have passed on this issue have each seemed to recognize and anticipate the ultimate resolution of the issue by the Supreme Court of the United States. See, *United States v. Ford*, 553 F 2d 146 (D.C. 1977); *United States v. Agrusa*, 541 F 2d 640 (8 Cir. 1976), cert. denied, 429 U.S. 1045; *In Re Application of the United States*, 563 F 2d 637 (4 Cir. 1977); *United States v. Scafidi*, 564 F 2d 633 (2 Cir. 1977), cert. denied, sub. nom., *Vigorito v. United States*; *Napoli v. United States* and *DeLuca v. United States*, 23 Cr. L 4057 (May 17, 1978); *United States v. Finazzo*, 583 F 2d 837 (Cir. 1978). The issue presented in VI herein raises the additional question of whether Title 111 implicitly or explicitly authorizes the District Court to approve a surreptitious entry to install oral and/or wire interception devices. The Sixth Circuit has recently held that Title 111 grants no such authorization. *United States v. Finazzo*, supra.

The issue presented in IX herein has also been resolved differently by different Circuits. The issue presented is the degree of involvement with a gambling organization necessary to sustain a conviction of conducting, financing, managing, supervising, directing or owning all or part of a gambling business. The required degree of involvement varies. See, *United States v. Milton*, 555 F 2d 1198 (5 Cir. 1977); *United States v. Bobo*, 477 F 2d 974 (4 Cir. 1973); *United States v. Box*, 530 F 2d 1258 (5 Cir. 1976); *United States v. Todaro*, 550 F 2d 1300 (2 Cir. 1977).

The issue presented by VII herein involves a Defendant's right to due process and a fair trial. In admitting taped conversations certain procedural rules must be followed. *United States v. Bryant*, 480 F 2d 785 (2 Cir. 1973). The Court failed to follow these procedures thereby affecting the Defendant's due process rights. As raised in issue VIII herein, this failure and the fact that the transcripts of the taped conversations were submitted to the jury violated the Defendant's right to a fair trial. *Palko v. Connecticut*, 302 U.S. 319.

(I)

Compliance With Section 2518(1)(E) Of Title 18, U.S.C., Is A "Stringent Pre-Condition" To The Issuance Of An Interception Order Under Title 111 Of The Omnibus Crime Control And Safe Streets Act of 1968.

The evidence presented at the hearings on the Appellants' Motion to Suppress was uncontroverted that the three law enforcement officers who helped to draft the affidavit in support of the wiretap and oral communication application of December 16, 1974, and January 16, 1975, including affiant Santacroce, knew at some time prior to December 16, 1975, that appellant Michael T. O'Brien and the same premises in question here, 103 New Britain Avenue, had been the subject of an earlier State wiretap order.

Section 2518(1)(E) sets a statutory precondition for obtaining an interception order that requires full disclosure to the judge to whom said application is made of all previous wiretap applications and the action taken thereon. Strict compliance with this procedure is mandated and failure to follow it should have resulted in suppression. *United States v. Giordano*, 416 U.S. 505, 527 (1974); *United States v. Chavez*, 416 U.S. 562, 580 (1974); *United States v. Bernstein*, 509 F.2d 996 (4 Cir. 1975); *United States v. Bellosi*, 501 F.2d 833 (D.C. Cir. 1974).

The District Court in ruling on this issue in its memorandum on the Motion to Suppress found this non-disclosure to be unintentional and harmless. The Court of Appeals erred in affirming this issue in that the mandate of Section 2518(1)(E) is one of a stringent precondition to the issuance of an interception order. Non-compliance with this condition merited suppression.

(II)

Title 111 Of The Omnibus Crime Control And Safe Streets Act Of 1968 Does Not Authorize Or Contemplate A

Joint Application For The Simultaneous Interception Of Both Wire And Oral Communications Absent A Showing Of Need For Both Procedures.

The instant case presented a novel instance wherein the Government applied simultaneously for authority to "bug" and wiretap the premises at 103 New Britain Avenue. No additional showing of need to utilize a "bug" in addition to the wiretap was made by the Government or required by the Court.

That "bugging" presents a greater intrusion on one's privacy has been clearly recognized. See, *Olmstead v. United States*, 277 U.S. 438 (1928); *Goldman v. United States*, 362 U.S. 129 (1942); *Silverman v. United States*, 365 U.S. 505 (1961); *Katz v. United States*, 389 U.S. 347 (1967); *Berger v. New York*, 388 U.S. 41, 64 (1967); 18 U.S.C. Section 2511(1)(a)(b) (1970); S. Rep. 1097, supra, at 91-92, 161; *United States v. Scafidi*, 564 F.2d 633 (2 Cir. 1977) (Dissent of Judge Smith at 645). Section 2516 clearly provides interception of oral communications as an alternative to that of wire communications. Before the greater invasion of privacy occasioned by a bug is authorized the Government should have had to demonstrate a need for investigative means in addition to that shown for the wiretap. If said procedure had been required in the instant case, the various surreptitious entries to install the bug might not have been necessary as the evidence clearly showed the wiretap could have been connected to apparatus outside 103 New Britain Avenue or the basement of 11 Julius Street.

(III)

Sections 2510(11) and 2518(10)(a) Of Title 18, U.S.C., Conferred Upon These Appellants An Automatic Standing To Challenge The Interceptions Since The Several Surreptitious Entries Permitted Unlawful Interceptions, Were Not Sufficiently Authorized On The Face Of The Interception Authorization, And Were Not Made In Conformity With The District Court's Express Order Of Authorization Or Approval.

As a result of numerous surreptitious entries at 103 New Britain Avenue, 99 New Britain Avenue, and 11 Julius Street, both a wiretap and a "bug" were successfully installed to monitor communications at, to, or from the "target premises" at 103 New Britain Avenue. The various moving papers to obtain the Court's Order and Authorization of December 16, 1974, are devoid of any mention of the other premises known as 99 New Britain Avenue and 11 Julius Street.

The District Court in its ruling on appellants' Motion to Suppress found appellants' lacked standing to challenge these interceptions and adhered to the "possessory or proprietary interest concept" needed to object to the claimed illegal entries. This Court also followed this line of reasoning in *United States v. Scafidi*, 564 F.2d 633 (2 Cir. 1977), cert. denied sub nom., *Vigorito v. United States*, *Napoli v. United States* and *DeLuca v. United States*, 23 Cr. L. 4057 (May 17, 1978). However, in Scafidi, the Court recognized "it seemed artificial" to say that one whose voice would not have been intercepted but for the entry had no standing to say the entry was improper. *United States v. Scafidi*, supra at 639.

Affirming the District Court's finding here on the issue of standing ignored the effect of Sections 2510(11) and 2518(10)(a) which confer statutory standing on one whose voice was overheard to object to unlawful interceptions, or interceptions not sufficiently authorized on the face of the authorization, or interceptions not in conformity with the Court's express order of authorization or approval. The particular facts of this case concerning numerous surreptitious entries to premises other than the "target premises" clearly bring the entries and lack of authority therefore, within the three categories set out in 18 U.S.C. Section 2518(10)(a).

(IV)

Title 111 And The Fourth Amendment To The United States Constitution Do Not Permit Surreptitious Entries To Install Oral And Wire Interception Devices Without Specific Authorizations By Court Order

and

(V)

The Summary Decision In The Instant Appeal Has Erroneously Enlarged The Holding In United States v. Scafidi To Permit Surreptitious Entries To Install Oral And/Or Wire Interception Devices Into Premises Other Than "Target Premises," Which Other Premises Are Not Mentioned Or Referred To In Any Way In The Government's Application, Or In The Court's Order And Authorization.

In its earlier ruling in United *States v. Scafidi*, a panel of the Court of Appeals for the Second Circuit ruled that interception devices may be installed in the "particular premises" described without a separate Court order authorizing said entry.[2] (Appendix, pp. 30a). Scafidi clearly recognized the split authority on this point. See, *United States v. Ford* , 553 F.2d 146 (D.C. 1977): *United States v. Finazzo*, 429 F. Supp. 803 (E.D. Mich. 1977), affirmed 583 F.2d 837 (6 Cir. 1978); *United States v. Rowland*, 448 F. Supp. 22 (N.D. Texas 1978); *United States v. Agrusa*, 541 F.2d 690 (8 Cir. 1976), cert. denied, 429 U.S. 1045; *In Re Application of United States*, 563 F.2d 637 (4 Cir. 1977); *United States v. Dalia*, 426 F. Supp. 682 (D.N.J. 1977); *United States v. London*, 424 F. Supp. 556 (D. Md. 1976), aff'd on other grounds, 556 F.2d 709 (4 Cir. 1977); *United States v. Finazzo*, 583 F.2d 837 (6 Cir. August 28, 1978, slip op. Docket No. 77-5186); McNamara, *The Problem of Surreptitious Entry to Effectuate Electronic Eavesdrops: How Do You Proceed After the Court Says "Yes"fi*, 15 Amer. Crim. L. Rev. 1 (1977).

In his concurring opinion in Scafidi, Judge Gurfein found it implicit that "ordinarily a single entry need be made" into the particular premises absent the exigent circumstances of equipment malfunction. United States v.

2. The majority opinion in Scafidi was written by Judge Moore with concurring opinion by Judge Gurfein. Judge Smith dissented.

Scafidi, supra at 644. By affirming the District Court's opinion on the Motion to Suppress here the Court of Appeals has now erroneously enlarged the rule of Scafidi to apply to numerous entries to other premises not mentioned in any of the Government's moving papers or the Court's Order or Authorization.

The December 16, 1974, order in this case failed to authorize surreptitious entries into the other premises (99 New Britain Avenue and 11 Julius Street) or the target premises (103 New Britain). In fact, Judge Clarie was never advised that entries were made into 11 Julius Street and/or 103 New Britain Avenue with the use of keys on December 17, 18 (twice), 19, 20 and 30, 1974, in the late night or early morning hours. The Court was never advised that on January 16th and 29th, 1975, similar entries were made. Nor did the Court know of the ruse used on December 19, 1974, to get into 99 New Britain Avenue. In fact, the Court's misgivings about such proposed conduct was made clear at the In Chambers Hearing of December 19, 1974, and the Court required a report back from the Government on the alternatives to the kind of installation. No report was ever made and the agents continued their undisclosed (to the Court) surreptitious entries. (See Appendix to Appellants' Consolidated Brief, pp. 241-254).

This obvious extension of the rule set out in the majority opinion in Scafidi is erroneous and violates any reasonable interpretation of Title 111 and the Fourth Amendment.

Additionally, the Fourth, Sixth, Eighth, and District of Columbia Circuits, In Re Application of United States, Finazzo, Agrosa, and Ford, supra, have ruled differently than the Second Circuit in Scafidi, in effect requiring express authorization by Court order for such surreptitious entries.

In view of the split of authority in these several Circuits and in the District Courts below, we urge this Court to grant this Petition and issue the Writ of Certiorari. This conclusion is mandated by a consideration of the privacy interests involved, the legislative history of Title III, and this Court's recognition in past cases that exigent circumstances are

rarely involved in cases of electronic surveillance.

(VI)

Title 111 Does Not Implicitly Or Explicitly Authorize A District Court To Order A Surreptitious Entry To Install Oral And/Or Wire Interception Devices.

Title 111 of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. s 2510, et. seq. does not implicitly or explicitly authorize surreptitious entries onto private property. In the case of *United States v. Finazzo*, 583 F.2d 837 (6 Cir. 1978), the Court held that the statute did not authorize the entries. The Court went on to hold that without such authorization a Federal Court Judge would not have the power to issue a warrant.

A recent case from the Supreme Court of the United States is in accord. In the case of *United States v. New York Telephone Company*, 434 U.S. 159, 48 S. Ct. 364, 54 L. Ed. 2d 376 (1977) the Court impliedly accepted the concept that without statutory authorization a warrant may not issue.

Since the various Circuits are divided on the issue and in view of the significant Constitutional implications, we urge this Court to grant this Petition and issue the Writ of Certiorari.

(VII)

The Admitting Into Evidence Of Taped Conversations And The Transcripts Thereof Require The Following Of Previously Enunciated Procedural Rules.

and

(VIII)

Submitting The Transcripts To The Jury For Use In Their Deliberations Violated The Defendants' Right To A Fair Trial.

Transcripts of recordings made by the government and pursuant to the government's wiretaps and bugging were offered as evidence along with the recordings at trial. To this offer the defense objected, citing among other deficiencies the lack of accuracy of the transcripts. The evidence was admitted.

Under the rule set down in *United States v. Bryant*, 480 F.2d 785 (2 Cir. 1973), where there is no stipulation as to accuracy of the transcripts an in camera hearing must be held. No hearing was held nor were any procedural safeguards followed as to the transcripts.

The transcripts were given to the jury when they were deliberating. The tapes, which were the best evidence, were left out of the jury room, although available upon request.

These procedural irregularities violated the Defendants' right to a fair trial as set out in *Palko v. Connecticut*, 302 U.S. 319; and *United States v. Bryant*, 480 F.2d 785 (2 Cir. 1973).

In view of the importance of the question involved and this Court's recognition in past cases of the importance of a fair trial, we urge this Court to grant this Petition and issue the Writ of Certiorari.

(IX)

Whether The Affirmation Of Conviction In The Instant Appeal Erroneously Interprets The Extent Of Involvement Required Under Title 18, Section 1955 Of The United States Code.

In order to be convicted of violating Title 18, § 1955 of the *United States Code* a Defendant must be found to have conducted, financed, managed, supervised, directed or owned all or a part of a gambling business. 18 U.S.C. § 1955(a). It is the degree of involvement required to sustain a conviction that has led to a split in the various Circuits and is an issue in this appeal.

The government ties Joseph Guerriero into the O'Brien gambling organization on the basis of one phone call where a bet was made (Trial Transcript Volume III page 439 and

Volume III page 1257). Agent Lind, a government expert, describes Guerriero as "at least a numbers writer" (Trial Transcript, Volume VII, page 988). There is absolutely no evidence to support that Guerriero had any regular business dealings with the O'Brien operation; in fact, the opposite conclusion is supported by the evidence.

The evidence against the Defendant, Irace, is equally weak. There are seven phone calls between Irace and O'Brien. (Exhibits 38-A-1, 38-B-E and 38-F; Trial Transcript Volume VI, pages 947-948, 952-955 and Volume VII, pages 1076-1090). A total amount of $213 is wagered and, in fact, Irace refuses action at one point. The most telling evidence that Irace is not a part of the gambling enterprise comes from the government itself when a government witness labels Irace an independent operator (Trial Transcript, Volume III, pages 1093-94).

The government's case against William Grant, Jr. consisted of two phone calls in which absolutely no gambling action was passed. (Trial Transcript, Volume V, pages 708-709, 735-736). Agent Lind, the government's expert witness, testified that these calls involving Grant evidenced that Grant was a part of the O'Brien organization. (Trial Transcript, Volume VII, pages 997-998, 1139). However, testimony from a government witness who had no knowledge of any of the parties involved, does not establish the legal standard. The government's case, built upon inferences and speculation, fails to prove the degree of requisite involvement to sustain a conviction under 18 U.S.C. § 1955.

It is the contention of the Defendants that something more than casual and infrequent contact with a gambling organization is required to sustain a conviction under 18 U.S.C. § 1955. Indeed, several Circuits have agreed with the Defendant's position. See, *United States v. Leon*, 534 F.2d 667 (6 Cir. 1976); *United States v. Thomas*, 508 F.2d 1200 (8 Cir. 1975); *United States v. Milton*, 555 F.2d 1198 (5 Cir. 1977); *United States v. Hunter*, 478 F.2d 1019 (7 Cir. 1972).

Other Circuits have taken a different position whereby virtually anyone having contact with the gambling operation

is found to have the requisite involvement under 18 U.S.C. § 1955. See, *United States V. Bohn*, 508 F.2d 1145 (10 Cir. 1975); *United States v. Becker*, 461 F.2d 230 (2 Cir. 1972); but see, *United States v. Todaro*, 550 F.2d 1300 (2 Cir. 1977).

The Defendants assert that their contact with the O'Brien gambling organization was minimal and this assertion is substantiated by the evidence at trial. The Defendants further assert that this minimal involvement is insufficient to sustain a conviction under 18 U.S.C. § 1955.

In view of the difference in the Circuits below as to the degree of involvement with a gambling organization required to sustain a conviction under 18 U.S.C. § 1955, we urge this Court to grant this petition and issue a Writ of Certiorari.

CONCLUSION

For all of the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

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